

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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CARMEN MENJIVAR GUARDADO,  
Plaintiff,

v.

FORD MOTOR COMPANY; HAYWARD  
FORD, INC.; and DOES 1 through  
50, inclusive,

Defendants.

No. 2:20-CV-00716 WBS AC

MEMORANDUM AND ORDER RE:  
PLAINTIFF'S MOTION TO REMAND  
AND DEFENDANT FORD MOTOR  
COMPANY'S MOTION TO DISMISS

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Plaintiff Carmen Menjivar Guardado filed this action against defendants Ford Motor Company ("Ford Motor"), Hayward Ford, Inc. ("Hayward Ford"), and Does 1 through 50, alleging various warranty and negligent repair claims arising out of the sale of a defective Ford vehicle. Before the court are plaintiff's motion to remand (Docket No. 13) and defendant Ford Motor's motion to dismiss (Docket No. 12).

I. Factual and Procedural Background

Plaintiff purchased a 2017 Ford Focus (the "vehicle").

1 (First Amended Complaint ("FAC") ¶ 8 (Docket No. 5).) In  
2 connection with the purchase of the vehicle, plaintiff received  
3 an express written warranty which provided, in relevant part,  
4 that in the event the vehicle developed a defect during the  
5 warranty period, plaintiff could deliver the vehicle for repair  
6 services to defendant Ford Motor's "representative" and the  
7 vehicle would be repaired. (Id. ¶ 11.) During the warranty  
8 period, plaintiff's vehicle developed defects in its engine,  
9 battery, emission, and transmission. (Id. ¶ 13.) Plaintiff  
10 delivered the vehicle for repair services, but defendant Ford  
11 Motor and its representative were unable to repair the vehicle.  
12 (Id. ¶ 16.) As a result, the use and/or value of the vehicle was  
13 substantially impaired. (Id. ¶ 17.)

14 Plaintiff filed suit in state court against only  
15 defendant Ford Motor alleging the following causes of action: (1)  
16 failure to replace or reimburse after reasonable number of repair  
17 attempts, Cal. Civ. Code § 1793.2(d); (2) failure to commence  
18 repair within a reasonable time, Cal. Civ. Code § 1793.2(b); (3)  
19 failure to make available to its authorized service and repair  
20 facilities sufficient service literature and replacement parts to  
21 effect repairs, Cal. Civ. Code § 1793.2(a)(3); (4) breach of  
22 express written warranty, Cal. Civ. Code § 1791.2(a); and (5)  
23 breach of the implied warranty of merchantability, Cal. Civ. Code  
24 § 1791.1. (See generally Complaint (Docket No. 1-2).)

25 Defendant Ford Motor removed the action based on  
26 diversity jurisdiction. (Docket No. 1.) Plaintiff subsequently  
27 filed a first amended complaint naming Hayward Ford as a  
28 defendant and alleging an additional claim against only Hayward

1 Ford for negligent repair. (See generally FAC.) Because Hayward  
2 Ford is a California corporation (id. ¶ 4), such that its  
3 involvement in this action destroys complete diversity, plaintiff  
4 moves to remand for lack of subject matter jurisdiction. (Mot.  
5 to Remand at 1.) Defendant Ford Motor in turn moves to dismiss  
6 only plaintiff's negligent repair claim against Hayward Ford.  
7 (Mot. to Dismiss at 8-11.)

8 I. Motion to Remand

9 "[T]he proper standard for deciding whether to allow  
10 post-removal joinder of a diversity-destroying defendant is set  
11 forth in 28 U.S.C. § 1447(e)." Boon v. Allstate Ins. Co., 229 F.  
12 Supp. 2d 1016, 1020 n.2 (C.D. Cal. 2002). Under Section 1447(e),  
13 a "district court has two options in dealing with an attempt to  
14 join a non-diverse party" after removal. Newcombe v. Adolf Coors  
15 Co., 157 F.3d 686, 691 (9th Cir. 1998). "If after removal the  
16 plaintiff seeks to join additional defendants whose joinder would  
17 destroy subject matter jurisdiction, the court may deny joinder,  
18 or permit joinder and remand the action to the State court." 28  
19 U.S.C. § 1447(e); id. "The language of § 1447(e) is couched in  
20 permissive terms and . . . the decision regarding joinder of a  
21 diversity-destroying-defendant is left to the discretion of the  
22 district court." Newcombe, 157 F.3d at 691.

23 In evaluating whether to deny joinder or to permit  
24 joinder and remand under Section 1447(e), the court considers the  
25 following factors: "(1) whether the party sought to be joined is  
26 needed for just adjudication and would be joined under Federal  
27 Rule of Civil Procedure 19(a); (2) whether the statute of  
28 limitations would preclude an original action against the new

1 defendants in state court; (3) whether there has been unexplained  
2 delay in requesting joinder; (4) whether joinder is intended  
3 solely to defeat federal jurisdiction; (5) whether the claims  
4 against the new defendant appear valid; and (6) whether denial of  
5 joinder will prejudice the plaintiff.” Flynn v. Wells Fargo  
6 Bank, N.A., No. 2:19-CV-00116 WBS KJN, 2019 WL 2249600, at \*4  
7 (E.D. Cal. May 24, 2019) (citing IBC Aviation Servs. v. Compañia  
8 Mexicana de Aviacion, S.A. de C.V., 125 F. Supp. 2d 1008, 1011  
9 (N.D. Cal. 2000)).

10 On balance, these factors weight against permitting  
11 joinder. With respect to the first factor, Hayward Ford is not a  
12 necessary party under Federal Rule of Civil Procedure 19(a)  
13 because plaintiff can obtain “complete relief” from defendant  
14 Ford Motor. See Fed. R. Civ. P. R. 19(a). If plaintiff is  
15 successful on the warranty claims against Ford Motor, “nothing  
16 precludes Plaintiff from recovering the full amount of damages  
17 requested in the Complaint, even in the absence of [the local  
18 dealer].” See Goines v. BMW of N. Am., LLC, No. LA 16-CV-09271  
19 JAK EX, 2017 WL 10676597, at \*3 (C.D. Cal. July 14, 2017)  
20 (denying joinder of local car dealership where plaintiff alleged  
21 warranty claims); Newcombe, 157 F.3d at 691 (affirming the  
22 district court’s denial of joinder where plaintiff sought damages  
23 that “could be fully satisfied by the other defendants”).  
24 “Conversely, if Defendant is found not to have breached the  
25 implied or express warranty of merchantability, Plaintiff can  
26 still seek to recover from [the local dealer] in a separate  
27 action” in state court. See Goines, 2017 WL 10676597, at \*3.  
28 Defendant Hayward Ford is therefore not necessary for just

1 adjudication of this action.

2           The second factor similarly weighs against permitting  
3 joinder. Plaintiff concedes that the relevant statute of  
4 limitations would not prevent her from bringing a cause of action  
5 against Hayward Ford in state court. (Mot. to Remand at 7.)

6           With respect to the third factor, plaintiff correctly  
7 asserts that the amended complaint was filed only two months  
8 after plaintiff filed her initial complaint. (Reply at 4-5  
9 (Docket No. 18).) A "minimal" delay, however, is not necessarily  
10 "justified." See Flynn, 2019 WL 2249600, at \*4. In determining  
11 whether there was "unexplained delay," "courts must consider  
12 whether the 'moving party knew or should have known the facts and  
13 theories raised by the amendment in the original pleading.'" Murphy v. Am. Gen. Life Ins. Co., 74 F. Supp. 3d 1267, 1284 (C.D.  
14 Cal. 2015) (quoting Jackson v. Bank of Hawaii, 902 F.2d 1385,  
15 1388 (9th Cir. 1990)). Plaintiff's explanation for the delay  
16 here is that she investigated the "corporate structure" of  
17 Hayward Ford to "determine that it was not a subsidiary or the  
18 alter-ego of Defendant [Ford Motor]." (Reply at 5.)

19           This argument is not persuasive. Plaintiff's initial  
20 complaint specifically states that the warranty required the  
21 local dealer -- Ford Motor's "representative" -- to repair the  
22 vehicle, and that the dealer failed to do so. (Compl. ¶¶ 10,  
23 15.) Therefore, it was Hayward Ford's failure to properly repair  
24 the vehicle that prompted plaintiff to file suit. Plaintiff's  
25 alleged confusion regarding the relationship between the two  
26 defendants does not explain why plaintiff, knowing that Hayward  
27 Ford failed to repair the vehicle, as well as all facts necessary  
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1 to allege a claim for negligent repair, did not name Hayward Ford  
2 in the initial complaint. Because plaintiff “knew or had reason  
3 to know of [the dealer’s] involvement long before” amending the  
4 complaint, this factor weighs against remand. Cf. Goines, 2017  
5 WL 10676597, at \*4.

6 The court similarly concludes that the fifth factor  
7 weighs against remand because several issues raise concerns as to  
8 whether the claims against Hayward Ford were asserted for the  
9 purpose of defeating diversity jurisdiction. First, as explained  
10 above, success on the negligent repair claim against Hayward Ford  
11 does not afford plaintiff any additional relief. Cf. Murphy, 74  
12 F. Supp. 3d at 1286. Plaintiff does not refute this point and  
13 does not articulate an alternative legitimate reason to join  
14 Hayward Ford after removal.

15 Second, the economic loss rule bars tort claims for  
16 purely economic losses. NuCal Foods, Inc. v. Quality Egg LLC,  
17 918 F. Supp. 2d 1023, 1028 (E.D. Cal. 2013) (citing Seely v.  
18 White Motor Co., 63 Cal. 2d 9, 18 (1965)). In order to recover  
19 on a claim for negligence, plaintiff must prove that the  
20 negligence caused “physical harm to person or property.” UMG  
21 Recordings, Inc. v. Global Eagle Entm’t, Inc., 117 F. Supp. 3d  
22 1092, 1103 (C.D. Cal. 2015) (quoting Giles v. General Motors  
23 Acceptance Corp., 494 F.3d 865, 873 (9th Cir. 2007)). Here,  
24 plaintiff claims only economic losses and does not allege that  
25 the defective vehicle harmed other property. (See FAC ¶ 30.)  
26 Further, plaintiff merely asserts in conclusory fashion that the  
27 claim is “facially legitimate” and does not respond to  
28 defendant’s contention that the economic loss rule would preclude

1 recovery here. (See Mot. to Remand at 6; see also Opp'n to Mot.  
2 to Dismiss at 5-6 (Docket No. 19).) Accordingly, the court  
3 cannot discern any reason, other than the destruction of  
4 diversity, for the joinder of Hayward Ford at this stage of the  
5 proceeding. The fifth factor therefore weighs against remand.

6 Finally, because plaintiff will not be prejudiced if  
7 the amendment is not granted, the sixth factor also weighs  
8 against remand. "[P]rejudice to a plaintiff 'exists if the  
9 proposed defendant is crucial to the case' and 'does not exist if  
10 complete relief can be afforded without that defendant.'" Bird  
11 v. Wells Fargo Bank, N.A., No. 16-cv-01130, 2017 WL 2797854, at  
12 \*6 (E.D. Cal. Jun. 27, 2017) (quoting McCarty v. Johnson &  
13 Johnson, No. 1:10-cv-00350, 2010 WL 2629913, at \*9 (E.D. Cal.  
14 2010)). As previously discussed, plaintiff can obtain complete  
15 relief even if Hayward Ford is not a named party. Further,  
16 because the economic loss rule appears to preclude recovery  
17 against Hayward Ford, plaintiff cannot be worse off if the court  
18 does not permit joinder. Cf. Vasquez v. Wells Fargo Bank, Nat'l  
19 Ass'n, 77 F. Supp. 3d 911, 923 (N.D. Cal. 2015) (finding no  
20 prejudice to plaintiff where "Plaintiff fails to state viable  
21 claims against" the joined defendant). Accordingly, because this  
22 factor, like the rest of the Section 1447(e) factors, weighs  
23 against remand, the court will exercise its discretion to deny  
24 plaintiff's joinder of Hayward Ford. See Newcombe, 157 F.3d at  
25 691. For the same reasons, the court will deny plaintiff's  
26 motion to remand and grant Ford Motor's motion to dismiss the  
27 negligent repair claim. Cf. id.

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1 IT IS THEREFORE ORDERED that plaintiff's motion to  
2 remand (Docket No. 13) be, and the same hereby is, DENIED.

3 IT IS FURTHER ORDERED that defendant's motion to  
4 dismiss this action as against defendant Hayward Ford, Inc. only  
5 (Docket No. 12) be, and the same hereby is, GRANTED.

6 Dated: June 25, 2020



7 **WILLIAM B. SHUBB**  
8 **UNITED STATES DISTRICT JUDGE**  
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